

**OPINION
66-502**

May 9, 1966 (OPINION)

Mr. E. Odin Sjaastad

Chairman

Workmen's Compensation Bureau

RE: Workmen's Compensation - Payments - Awards Not Confidential

This is in response to your letter in which you ask for an opinion on the following questions:

Question No. 1:

If a partial lump-sum is granted, do the regular payments continue on a weekly basis, or should they be discontinued until such time as lump-sum settlement is used up at the regular rate. This would pertain to either permanent total or permanent partial.

Question No. 2:

If an award is made and claimant and employer are notified of the award, would section 65-04-15 prohibit the disclosure of the details of the award to other persons. In other words, which records of the Workmen's Compensation Bureau pertaining to claims and awards are confidential and which are public."

As to Question No. 1, it is noted that section 65-05-25 of the North Dakota Century Code does not provide the specific manner in which the Bureau is to make the lump sum award. It merely directs that certain factors be considered. We are unable to read into the statute certain prohibitions or requirements such as the suspension of all payments after awarding a lump sum payment until an amount equal to the lump sum would have been paid or accumulated. Some discretion is left to the Bureau as indicated by the Supreme Court in Gotchy v. North Dakota Workmen's Compensation Bureau, 49 N.D 915. Apparently the question of suspending all payments lies within the discretion of the Bureau.

The main point to consider by the Bureau is the probability of future payments by taking into consideration the American experience table of mortality. The determining factor is that which " * * * is for the best interest of the beneficiary." The reference to the table of mortality obviously indicates that the Bureau should exercise sound judgment in awarding lump sum payments to avoid making excessive payments. However, it is fully realized that any projection in the future is nothing but an educated or calculated guess and that even a strict application of any rule or procedure can result in a conclusion which differs from the projected conclusion.

In the case of widows or widowers, the statute is more exacting but that has no application here except it is an indication that the exactness with relation to a beneficiary is not as specific. This, however, is not a conclusion of law.

We cannot state as a matter of law that the Bureau may not make a lump sum award without stopping all payments until such payments would have equaled the amount of the award. The Bureau is to exercise discretion and yet take sufficient precaution so that the probability of excessive overpayments will not result to the detriment of the program. Because of the language, "* * * * the bureau may grant a partial lump settlement based upon the same computations as the complete lump sum.", the same result would be reached as to partial lump settlements as indicated above.

As to Question No. 2, we must take into consideration the functions and operations of the Bureau. The Bureau acts in a dual capacity. In one instance it administers an insurance program in the same capacity as an insurance company. In the other instance it acts as an administrative agency which hears and determines claims filed with the Bureau as the insurance company. In the latter instance it is acting as a quasi-judicial body. Normally the actions of the Bureau as an insurance company would be considered private in the same nature as any insurance company doing business in the State of North Dakota, but in this instance the Bureau is a public agency of the state doing business as the Workmen's Compensation Bureau. Its "stockholders" are the electorate of the State of North Dakota, who act through the Legislature. It is in this respect noted that the Legislature enacted section 44-04-18, which provides as follows:

ACCESS TO PUBLIC RECORDS. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours."

The language in the above-quoted section, "* * * * Except as otherwise specifically provided by law, * * * *" requires this office to examine the provisions of Title No. 65 to determine whether or not any provisions have been made to create an exemption to section 44-04-18. In doing this we are only aware of section 65-04-15. No other statutes were pointed out and we are not aware of any other provisions.

Section 65-04-15 pertains to the employer's report which, in effect, is the report required by law to be filed by the employer upon which the premium is determined. It might also be sufficiently broad enough to include the employer's report filed in connection with a claim but the language in said section is not broad enough to include a claim filed by an injured employee. Consequently, we cannot conclude as a matter of law that section 65-04-15 creates an exemption to section 44-04-18 as to awards made by the Bureau. Where the Bureau acts in a quasi-judicial capacity, the same rules would apply as to making public the matter considered as would apply to judicial proceedings in a court.

Because of this conclusion and because of the provisions of section 44-04-18 of the North Dakota Century Code, in our opinion the awards made by the Bureau would come within the provisions of said section. This might not be a desired result and if it is deemed advisable, the legislature should be approached to make the necessary amendment or correction.

HELGI JOHANNESON

Attorney General